



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
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Secretary

ROBERT W. GOLLEDGE, Jr.  
Commissioner

March 21, 2005

Via U.S. Mail

The Honorable Vernon A. Williams  
Secretary, Surface Transportation Board  
1925 K Street, NW  
Washington, DC 20423

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Office of Proceedings

MAR 28 2005

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Public Record

Re: Motion for Protective Order  
STB Finance Docket No. 34391-0  
DEP Response

Dear Secretary Williams:

Enclosed for filing please find the Opposition of Massachusetts Department of Environmental Protection to New England Transrail LLC's Motion for Protective Order.

Please do not hesitate to contact me with any questions you may have.

Thank you for your consideration.

Sincerely,

*Margaret R. Stolfa* (A)

Margaret R. Stolfa  
General Counsel

cc: Daniel R. Deutsch, Esq.  
John F. McHugh, Esq.  
Steven Richmond, Esq.

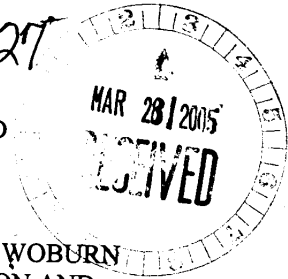
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BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34391-0  
NEW ENGLAND TRANSRAIL, LLC, d/b/a/ WILMINGTON AND WOBURN  
TERMINAL RAILROAD CO. – CONSTRUCTION, ACQUISITION AND  
OPERATION EXEMPTION FOR OPERATION  
AS A CLASS III CARRIER OVER LINES OWNED  
BY BOSTON AND MAINE RAILROAD



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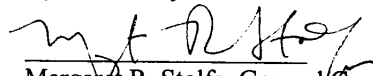
NATIONAL SOLID WASTES MANAGEMENT ASSOCIATION, ET AL  
PETITION FOR DECLARATORY ORDER OR, IN THE ALTERNATIVE,  
PETITION TO REVOKE CONDITIONAL EXEMPTION AND  
REQUEST FOR INFOMRAL HEARING

OPPOSITION OF MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL  
PROTECTION TO NEW ENGLAND TRANSRAIL LLC'S  
MOTION FOR PROTECTIVE ORDER

The Massachusetts Department of Environmental Protection ("DEP") submits this filing in response to New England Transrail, LLC's ("NET") *Motion for Protective Order*. NET filed a Motion for Protective Order with the Surface Transportation Board ("STB") relating to "communications between NET and potential customers of its facility at Wilmington, Ma [(sic)]". (Motion for Protective Order at 1.) The DEP opposes NET's motion as NET has provided insufficient information for the STB to ascertain whether the information provided confidentially and under seal pursuant to 49 CFR 1104.14 should be deemed confidential. Because NET provided so little information, the STB lacks sufficient information to determine whether "good cause exists to grant the motion for protective order" and whether "the unrestricted disclosure of confidential, proprietary, or commercially sensitive material could cause serious

competitive injury.” Duke Energy Corporation v. Norfolk Southern Railway Company, Decision on Motion for Protective Order, STB Docket No. 42069-0 (February 5, 2002). There is no information in NET’s motion to conclude whether the submitted documents include information of the sort typically allowed by the STB, i.e. proprietary or commercially sensitive material, to be kept confidential under a protective order. In addition, there is no way the DEP can ascertain from the motion filed whether the information filed would be “necessary for it to make its case [or] to argue an appeal adequately.” Central Illinois Railroad Co.– Lease and Operation Exemption– Lines of the Burlington Northern and Santa Fe Railway Co. at Chicago, Cook County IL, Denial of appeal of Grant of Motion for Protective Order, STB Finance Docket 33960-0 (March 2, 2001)(citations omitted). Therefore, the DEP opposes NET’s Motion for a Protective Order and asks that the STB deny NET’s motion. In the alternative, the DEP requests review of the documents filed with NET’s motion as a directly interested party. To maintain confidentiality of such documents once in the possession of the DEP, NET may request that the DEP determine whether such records are confidential pursuant to M.G.L. c. 4, s.7, cl. 26.

Respectfully submitted,  
Department of Environmental Protection,  
By its attorney,

  
Margaret R. Stolfa, General Counsel  
Department of Environmental Protection  
Office of General Counsel  
One Winter Street  
Boston, MA 02109  
(671) 292-5922

**CERTIFICATE OF SERVICE**

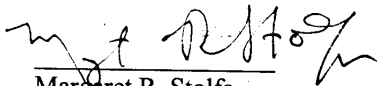
I hereby certify that a true copy of the Department of Environmental Protection's opposition was served this day via first class mail upon the following:

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Dated: March 21, 2005

  
Margaret R. Stolfa  
General Counsel